

Troubling Patterns in Canadian Refugee Adjudication

BY SEAN REHAAG*

This article uses data obtained from Canada's Immigration and Refugee Board [IRB] to calculate the refugee claim grant rates of individual IRB adjudicators. The data reveals that, in 2006, grant rates varied significantly across adjudicators. Some adjudicators accorded refugee status in virtually all cases they heard; others granted refugee status rarely, if at all. The article explores several explanations offered by the IRB for refugee claim grant rate variations. These explanations relate to patterns in case assignment due to adjudicator specialization in particular types of cases from particular regions of the world. The author contends that while patterns in case assignment do affect grant rates, they do not account for the full variations evident in the data. Rather, outcomes in refugee adjudication appear to hinge, at least in part, on the identity of the adjudicator assigned.

The author draws three main conclusions from the data on refugee adjudication in 2006. First, further empirical research should be undertaken to verify the results of the study and to identify specific features of adjudicator identity that affect refugee claim outcomes. Second, the appointment process for IRB adjudicators should be carefully scrutinized in light of grant rate disparities. Third, given both the grant rate disparities and the life and death stakes involved in refugee adjudication, it is imperative there be opportunities to meaningfully review negative first instance refugee determinations. To this end, the government should immediately implement the provisions in Canada's immigration legislation that establish a Refugee Appeal Division at the IRB.

Cet article calcule le taux d'accueil des revendications du statut de réfugié par arbitre à l'aide de données de la Commission d'immigration et du statut de réfugié [CISR]. Cette étude révèle que l'acceptation des revendications, en 2006, variait sensiblement d'un arbitre à l'autre; certains accordaient presque invariablement le statut de réfugié, alors que d'autres le faisaient rarement, voire même jamais. L'article examine diverses explications de ces variances fournies par la CISR. Celles-ci ont trait à la répartition du travail en tenant compte de la spécialisation des arbitres pour certains types de dossiers provenant de certaines régions du monde. Tout en reconnaissant que ce facteur puisse jouer dans le taux d'accueil des revendications du statut de réfugié, l'auteur soutient que cela n'explique pas totalement la grande variance observée dans les décisions rendues. Il semble que l'identité de l'arbitre qui étudie le dossier y joue une part également.

L'auteur tire trois grandes conclusions à partir des données d'arbitrage de 2006 en matière du statut de réfugié. Premièrement, il faudrait entreprendre d'autres recherches empiriques afin de vérifier les résultats de cette étude et de cerner certains traits de l'identité de l'arbitre qui influent sur la décision d'accorder ou non le statut de réfugié. Deuxièmement, il y aurait lieu d'analyser attentivement la procédure de nomination des arbitres à la CISR en tenant compte de la grande disparité dans les décisions. Troisièmement, étant donné la grande disparité dans les décisions et les enjeux de vie et de mort liés à l'arbitrage en matière du statut de réfugié, il est impératif de prévoir des mécanismes valables pour le contrôle des déterminations négatives au premier palier. À cette fin, le gouvernement devrait immédiatement mettre en œuvre les dispositions de la loi canadienne sur l'immigration relativement à la création d'une Section d'appel des réfugiés à la CISR.

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Troubling Patterns in Canadian Refugee Adjudication

BY SEAN REHAAG

I. INTRODUCTION

In 2004, a widely discussed newspaper article raised concerns regarding differential refugee claim grant rates among adjudicators at Canada's Immigration and Refugee Board (IRB).¹ The article noted that some adjudicators granted refugee status in over 80% of the refugee claims they heard, whereas others denied all the claims they heard. According to the article: "Immigration and refugee lawyers say what they term the wild variation in . . . acceptance rates is unacceptable and underscores the fact that some of these political appointees make life-and-death decisions in an arbitrary manner."² In response to these allegations, a spokesperson for the IRB suggested:

[T]he variation in acceptance rates can be explained, in part, by the fact that members specialize in certain regions Some individuals with a high volume of positive cases . . . preside over "expedited or fast-track" cases from war-torn countries that are accepted by a case officer and then approved by board members.³

The present article assesses these divergent understandings of the large disparities in refugee adjudicators' grant rates through a study of recent data obtained from the IRB. The article begins by briefly outlining the refugee determination process at the IRB to provide a context for the study. It then sets out the methodology through which the data for the study was obtained. Next, it presents the data, highlighting the dramatic variations it reveals in the grant rates of refugee adjudicators. The article then evaluates the arguments related to selective case assignment put forward by the IRB to explain grant rate variations and concludes that patterns in case assignment fail to account for the full variations evident in the data. Instead, the divergent grant rates appear to result, at least in part, from factors unrelated to the merits of refugee claims, namely, the identity of refugee adjudicators. Finally, the article explores several implications of the study's central finding that refugee determinations in Canada appear to hinge to some degree on the identity of the adjudicators assigned to particular claims.

1. Marina Jiménez, "Refugee approval rates vary widely: Some board members reject all applicants" *The Globe & Mail* (24 July 2004) A1.

2. *Ibid.*

II. IRB REFUGEE DETERMINATIONS

Canada has developed a complex refugee determination system to meet its obligations under both international refugee law and Canadian constitutional law.⁴ The most important step in that system is a refugee hearing at the IRB.⁵ When IRB adjudicators—known as “Board Members”—preside over hearings, their primary responsibility is to determine whether claimants meet the refugee definition set out in Canada’s immigration legislation.⁶ According to this definition, a refugee is:

[A] person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries.⁷

It is worth noting that there are extremely serious consequences to IRB determinations regarding whether claimants meet the refugee definition. On the one hand, a large number of false positive decisions could put the entire refugee determination system at risk. In particular, reports of false positive decisions may foster popular perceptions that the refugee determination system is vulnerable to abuse from economically motivated migrants seeking to circumvent regular immigration procedures. This could lead to calls for further limiting access to refugee protection in order to protect the ability of the government to set and enforce immigration policy.⁸

On the other hand, the possible consequences of false negative refugee decisions are even more severe. False negative decisions leave individuals who, in fact, meet the refugee definition vulnerable to deportation to countries where they face persecution, torture, or even death.⁹ Indeed, these possible consequences are so

3. *Ibid.*

4. For a list of the broad policy objectives of Canada’s refugee determination system, see *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, s. 3(2) [IRPA]. For a general overview of the refugee determination system and its relation to international and constitutional law, see Martin Jones & Sasha Baglay, *Refugee Law* (Toronto: Irwin Law, 2007) at 30–69, 215–253. For a comprehensive discussion of international refugee law, see James C. Hathaway, *The Rights of Refugees Under International Law* (Cambridge: Cambridge University Press, 2005).

5. IRPA, *ibid.*, s. 170(b); Jones & Baglay, *ibid.* at 236 states: “The centerpiece of the Canadian refugee determination process is the oral hearing of the claim.”

6. IRPA, *ibid.*, s. 107. Note that Board Members must also determine whether individuals who fail to meet the refugee definition nonetheless meet the definition of “person in need of protection,” *ibid.*, ss. 97, 107.

7. *Ibid.*, s. 96(a). See also *ibid.*, ss. 98, 101, 108, for further limits on the refugee definition.

8. For an example of a call to limit access to Canadian refugee protection based on such arguments, see Stephen Gallagher, “Canada’s Dysfunctional Refugee Determination System: Canadian Asylum Policy from a Comparative Perspective” (2003) 78 *The Fraser Institute’s Public Policy Sources* 1.

9. IRPA, *supra* note 4 (Under Canadian immigration legislation, only refugees and other protected persons are entitled to non-refoulement, that is to say, the right not to be removed to countries where they face “persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion or at risk of torture or cruel and unusual treatment or punishment,” s. 115). See also Canadian Council for Refugees, Report, “The Refugee Appeal: Is No One Listening?” (31 March 2005), online: Canadian Council for Refugees <<http://www.ccrweb.ca/refugeeappeal.pdf>> (“[A] wrong decision may mean that a claimant is sent back to face persecution, torture and even death.” at 1).

severe that the Supreme Court of Canada has held that refugee determinations engage refugee claimants' constitutional rights to life, liberty and security of the person guaranteed by section 7 of the *Canadian Charter of Rights and Freedoms*.¹⁰ Furthermore, the severe consequences of false negative refugee determinations accrue not only to the individuals whose claims are wrongly denied, but also to the Canadian government. More specifically, deporting individuals who, in fact, meet the refugee definition may violate international refugee law.¹¹ Therefore, Canada is at risk of breaching international law when erroneous negative refugee determinations cause individuals who meet the refugee definition to be vulnerable to deportation.

Given the immense stakes at play in refugee decisions, the IRB has been structured as an independent administrative tribunal.¹² Board Members, who are appointed by the Governor in Council,¹³ hold office for a set term, during which time they can only be removed with cause.¹⁴ This security of tenure ensures that Board Members presiding over refugee hearings are able to assess whether individuals meet the refugee definition without undue government interference.¹⁵ Such independence is particularly significant, considering that governments may be reluctant to recognize refugees from certain countries due to strong financial or diplomatic pressure from abroad, or due to domestic political considerations.¹⁶

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10. *Singh v. Canada (Minister of Employment and Immigration)*, [1985] 1 S.C.R. 177 at 207, 17 D.L.R. (4th) 422 [Singh cited to S.C.R.]; *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.
 11. *Convention relating to the Status of Refugees*, 28 July 1951, 189 U.N.T.S. 150, Can.T.S. 1969 No. 6 (entered into force 22 April 1954, accession by Canada 4 June 1969) ("No Contracting State shall expel or return . . . a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion," art. 33(1)). See also Hathaway, *supra* note 4 ("[I]t is one's de facto circumstances, not the official validation of those circumstances, that gives rise to Convention refugee status . . ." at 158).
 12. *IRPA*, *supra* note 4, ss. 151–186. See also *Bourbonnais v. Canada (Attorney General)*, 2004 FC 1754, [2005] 4 F.C.R. 529 at paras. 49–57, 267 F.T.R. 169 (reviewing the main features of the IRB and concluding at para. 57 that "Parliament intended to give the IRB and its divisions a certain measure of independence, but that this judicial independence does not have the same scope as that given to courts of law and superior court judges.") [*Bourbonnais* cited to F.C.R.]; *Zrig v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1043, [2002] 1 F.C. 559, 211 F.T.R. 219 (holding at para. 74 that the appointment terms of Board Members comply with "the minimal requirements of administrative independence") [*Zrig* cited to F.C.].
 13. For a discussion of the IRB appointment process, see Part VII. B, below.
 14. *IRPA*, *supra* note 4, s. 153(1).
 15. For a general discussion of the importance of the independence of IRB Board Members, see Gerald Heckman & Lorne Sossin, "How Do Canadian Administrative Law Protections Measure Up to International Human Rights Standards? The Case of Independence" (2005) 50 McGill L.J. 193 at 252–57.
 16. For discussions of the role of political considerations, including foreign policy considerations, in refugee determinations, see Matthew E. Price, "Politics or Humanitarianism? Recovering the Political Roots of Asylum" (2004) 19 Geo. Immigr. L.J. 277; David Corlett, "Politics, Symbolism and the Asylum Seeker Issue" (2000) 23:3 U.N.S.W.L.J. 13; Tanya Basok & Alan Simmons, "A Review of the Politics of Canadian Refugee Selection" in Vaughan Robinson, ed., *The International Refugee Crisis: British and Canadian Responses* (London: MacMillan Press, 1993) at 132; The Harvard Law Review Association, "Prisoners of Foreign Policy: An Argument for Ideological Neutrality in Asylum" (1991) 104 Harv. L. Rev. 1878; Gil Loescher & Laila Monahan, eds., *Refugees and International Relations* (Oxford: Oxford University Press, 1989).

While the independence of Board Members offers important protections against inappropriate government interference in refugee adjudication, this independence sometimes makes it difficult for the IRB to achieve another key policy objective: consistency across refugee determinations made by different Board Members.¹⁷ It goes without saying that outcomes of refugee determinations—in which the human rights and the very lives of refugees may be at stake—should hinge on the merits of refugee claims presented, not on the identity of the Board Member who happens to be assigned to a particular claim. To this end, the IRB has adopted several measures to increase consistency in refugee adjudication across Board Members.¹⁸ These measures include: enhanced training for Board Members;¹⁹ the use of “guidelines” issued by the Chair of the IRB;²⁰ the designation of certain decisions as “jurisprudential guides” or “lead cases”;²¹ and having staff lawyers review draft decisions.²² However, these efforts aimed at enhancing consistency across Board Member decisions have proven to be controversial. In particular, a number of these measures have been subject to constitutional challenges on the grounds that they inappropriately fetter the discretion of Board Members, thereby compromising their independence.²³

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17. Peter Carver, “Guides’ Honour: A Note on Procedural Guidelines and the Decisions in *Thamotharem v. Canada* (M.C.I.) and *Benitez v. Canada* (M.C.I.)” (2006) 40 Admin. L.R. (4th) 279 (“For a high-volume tribunal that operates through regional offices across Canada, dealing with an often controversial subject matter—all of which describes the IRB—a driving interest in achieving consistency is understandable.” at 286); Peter Showler, “Consistency in Decision Making” (Speech presented to the Council of Canadian Administrative Tribunals, Ottawa, 12 June 2000), online: Immigration and Refugee Board of Canada <http://www.irb-cisr.gc.ca/en/media/speeches/2000/ccat_e.htm> (“Tension clearly exists between the need for consistency and the independence of decision makers.” at “Consistency in Decision Making”).
 18. For overviews of the measures taken to enhance consistency at the IRB, see Showler, *ibid.* at “Consistency Initiatives”; Peter Showler & Lori Disenhouse, “Tribunal Management: In Search of Nimbleness” (Speech presented to the Council of Canadian Administrative Tribunals, Ottawa, 3 June 2002), online: Immigration and Refugee Board of Canada <http://www.irb-cisr.gc.ca/en/media/speeches/2002/ccat_e.htm>; François Crépeau & Delphine Nakache, “Critical Spaces in the Canadian Refugee Determination System: 1989–2002” Int’l J. Refugee L. [forthcoming in 2008].
 19. Showler, *ibid.* (“The IRB regularly develops training sessions on areas where there are inconsistencies in decision making.” at “Remedial Initiatives”). However, some commentators suggest that training for Board Members could be dramatically improved. See e.g. Cécile Rousseau *et al.*, “The Complexity of Determining Refugeehood: A Multidisciplinary Analysis of the Decision-making Process of the Canadian Immigration and Refugee Board” (2002) 15 J. Refugee Stud. 43 at 45, 67.
 20. IRPA, *supra* note 4, s. 159(1)(h). For an excellent discussion of the impact of one chairperson’s guideline, see Nicole LaViolette, “Gender-Related Refugee Claims: Expanding the Scope of the Canadian Guidelines” (2007) 19 Int’l J. Refugee L. 169.
 21. IRPA, *ibid.*, s. 159(1)(h); Showler & Disenhouse, *supra* note 18 at “Chairperson’s Guidelines and Lead Cases.”
 22. Showler & Disenhouse, *ibid.* at “Reason’s Review.”
 23. See e.g. *Bovbel v. Canada* (Minister of Employment and Immigration), [1994] 2 F.C. 563, 113 D.L.R. (4th) 415 (C.A.) (involving a challenge to the reviews of draft decisions by IRB staff lawyers); *Geza v. Canada* (Minister of Citizenship and Immigration), 2006 FCA 124, (*sub nom.* *Kozak v. Canada* (Minister of Citizenship and Immigration)) [2006] 4 F.C.R. 377, 267 D.L.R. (4th) 54 [Geza cited to F.C.R.] (involving a challenge to the practice of designating lead cases); *Thamotharem v. Canada* (Minister of Citizenship and Immigration), 2007 FCA 198, 60 Admin. L.R. (4th) 247 (involving a challenge to the chairperson’s guidelines).

In considering the proper balance between consistency and independence at the IRB, and in evaluating whether the existing refugee determination system complies with both constitutional and international law, it is important to develop a sophisticated understanding of the extent to which outcomes in refugee determinations vary according to the Board Members assigned to particular claims. However, empirical assessments of such variations are methodologically challenging. The major challenge is that the vast majority of refugee decisions are unreported, and the few reported decisions do not constitute a representative sample of all refugee determinations at the IRB.²⁴ This challenge is compounded by the fact that Board Members are generally not required to provide written reasons for positive decisions.²⁵ The remainder of this article seeks to contribute to the ongoing discussions about consistency in Canadian refugee adjudication by attempting to overcome these methodological challenges through an empirical study of variations in refugee claim grant rates based on new data obtained from the IRB.

III. THE METHODOLOGY OF THE CURRENT STUDY

The IRB maintains a database of all claims they hear. While this database is not directly accessible to the public, the *Access to Information Act*²⁶ sets out procedures through which it is possible to obtain some of the information contained in the database. To this end, the data in the present study was obtained through a formal Access to Information Request to the IRB, which requested:

the following information for all cases involving principal claimants decided by the Refugee Protection Division of the Immigration and Refugee Board where a decision was mailed to the claimant in 2006: (1) File Number; (2) Claim Type; (3) Claim Type Details; (4) Country of Origin; (5) Gender of the Principal Claimant; (6) Decision; (7) Date the Decision was Mailed; (8) Name of the Board Member.²⁷

In response, the IRB provided a list of the requested information.²⁸ This list was then digitized and extraneous information was filtered out,²⁹ producing

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24. Jenni Millbank, "Imagining Otherness: Refugee Claims on the Basis of Sexuality in Canada and Australia" (2002) 26 Melbourne U.L. Rev. 144 at 149; Immigration and Refugee Board of Canada, Decisions, "RefLex," online: Immigration and Refugee Board of Canada <http://www.irb-cisr.gc.ca/en/decisions/reflex/index_e.htm?action=about#reflex03>. Note that decisions are selected for publication by the IRB when: "[t]he reasons set out a novel approach to the law"; "[t]he reasons set out the law in a clear and concise manner"; "[t]he reasons demonstrate the application of an established legal principle to an unusual or novel fact situation"; or "[t]he reasons are representative of a number of decisions decided on a specific issue from a particular country, or are representative of a number of decisions decided in a particular region of the IRB." at "3. Selection Criteria."
 25. *Refugee Protection Division Rules*, S.O.R./2002-228, s. 6(1)-(2).
 26. R.S.C. 1985, c. A-1.
 27. Sean Rehaag, "Access to Information Request Form" (15 May 2007) [on file with author].
 28. Letter from Eric Villemaire, Director, Access to Information and Privacy, Immigration and Refugee Board to Sean Rehaag (21 June 2007), IRB File #: A-2007-00023 / de, online: Canadian Council for Refugees <<http://www.ccrweb.ca/documents/rehaagdata.htm>> [IRB Letter].

a database of 9,984 refugee claims involving principal claimants where a positive or negative decision was mailed to the claimant in 2006. It is worth emphasizing that the database does not include all refugee decisions made in 2006 because the data is restricted only to decisions involving principal claimants. In other words, it does not include refugee claims made by accompanying partners or dependent children. To put the database into context, according to the United Nations High Commission for Refugees, there were 19,827 cases decided at the IRB in 2006, of which 17,369 resulted in positive or negative decisions, with the remainder being otherwise resolved.³⁰

IV. GRANT RATES OF IRB ADJUDICATORS

According to the data provided by the IRB in response to the Access to Information Request, little has changed since the 2004 media article on variations between the grant rates of particular Board Members in refugee cases.³¹

In 2006, some Board Members accorded refugee status in all the cases they heard, including Robert Owen (26 cases) and Jean-Pierre Beauquier (50 cases). Other Board Members who decided larger numbers of cases also had very high refugee grant rates. For example, Gilles Ethier (138 cases) had a grant rate of 95.65% and Martin Ginsberman (202 cases) had a grant rate of 94.55%.

In contrast, during the same period other Board Members accorded refugee status in a dramatically lower percentage of the cases they heard. For instance, Sajjad Randhawa (46 cases) had a grant rate of only 2.17%. Other Board Members with higher caseloads also had extremely low grant rates. For example, Roger Houde (90 cases) had a grant rate of only 6.67% and Suparna Ghosh (119 cases) had a grant rate of 9.24%.

Table 1 offers an indication of the significant differences between the grant rates of Board Members. This table lists the five highest and five lowest grant rates for Board Members who decided at least 50 principal claimant refugee claims in 2006. The full list of grant rates for individual Board Members is also reproduced in the Appendix to this article. In perusing Table 1 and the Appendix, one cannot help but be struck by how dramatically grant rates vary from one Board Member to the next.

29. The IRB provided a list of 11,998 records. Of these, 972 involved multiple listings for single claims; 1,017 involved cases that were abandoned, withdrawn or otherwise administratively resolved; and 25 were records where no information regarding the Board Member was provided.

30. "Asylum Applications and Refugee Status Determination by Country of Asylum and Level in the Procedure, 2006" in *UNHCR Statistical Yearbook 2006: Trends in Displacement, Protection and Solutions* (Geneva: UNHCR, 2007) at Table 7, online: UNHCR <<http://www.unhcr.org/statistics.html>>.

31. See text accompanying note 1.

Table 1: Five Highest and Lowest Grant Rates in Principal Claimant Refugee Cases in 2006 for IRB Members Deciding at Least 50 Cases

| | Board Member | Decisions | Grant Rate (%) |
|-----------------------------|------------------------|-------------|----------------|
| Lowest Five | Houde, Roger | 90 | 6.67 |
| | Ghosh, Suparna | 119 | 9.24 |
| | Wong, Bing | 68 | 11.76 |
| | Freilich, Miriam | 123 | 13.01 |
| | Weir, Margaret | 128 | 16.41 |
| | Subtotal | 528 | 11.74 |
| Highest Five | Lederq, Dominique | 80 | 91.25 |
| | Kitchener, Susan | 107 | 92.52 |
| | Ginsberman, Martin | 202 | 94.55 |
| | Ethier, Gilles | 138 | 95.65 |
| | Beauquier, Jean-Pierre | 50 | 100 |
| | Subtotal | 577 | 94.45 |
| Total at IRB in 2006 | | 9984 | 54.08 |

V. IRB EXPLANATIONS FOR DIVERGENT GRANT RATES

Anticipating that these widely divergent grant rates would be evident from the data provided in response to the Access to Information Request, the IRB appended a letter to the data. This letter volunteers an explanation as to why Board Members' grant rates vary significantly.³²

The IRB's explanation for divergent grant rates turns on the notion that cases are not randomly assigned to particular Board Members. To the contrary, Board Members "are often grouped into specialized geographical teams so that they can develop expertise in specific country conditions."³³ As a result, according to the IRB, divergent grant rates among Board Members reflect patterns in the types of cases assigned:

[T]he number of claims that an individual member may accept or reject is related to the nature of the claims that the member hears and the countries of origin involved. Conclusions or inferences should not be drawn from acceptance rates. For example, a member with a large caseload for countries that are democratic with a respect for the rule of law may have a lower overall acceptance rate than a member with a large case load from countries where the rule of law is not respected.³⁴

32. IRB Letter, *supra* note 28 at "Members' Acceptance Rates: Explanatory Note."

33. *Ibid.*

34. *Ibid.*

Similarly, the IRB notes that some Board Members, “by the nature of their particular assignment, may do a large number of expedited cases. Expedited cases will bring about mostly positive decisions since they involve cases that appear to have a manifestly well-founded basis.”³⁵

VI. EVALUATING EXPLANATIONS FOR DIVERGENT GRANT RATES

The IRB is correct to suggest that some of the variation in grant rates can be attributed to the fact that Board Members frequently specialize in certain types of cases. For example, all but one of the refugee cases assigned to Jean-Pierre Beauquier (50 cases) in 2006 resulted in expedited positive decisions. Given that decisions as to whether to expedite claims are made administratively, prior to assigning cases to particular Board Members, and considering that claims are only expedited where their success appears to be very likely,³⁶ it is understandable that Beauquier had a 100% grant rate. Indeed, as Table 2 shows, Board Members who decide a significant number of expedited cases are likely to have very high grant rates.

Table 2: Grant Rates For IRB Members With Over 40 Expedited Positive Refugee Decisions Involving Principal Claimants in 2006

| Board Member | Expedited Positive Decisions | Overall Grant Rate (%) |
|------------------------|------------------------------|------------------------|
| Quirion, Richard | 120 | 91.03 |
| Ginsberman, Martin | 173 | 94.55 |
| Beauquier, Jean-Pierre | 49 | 100 |
| Total | 342 | 93.95 |

The IRB is also correct to suggest that geographic specialization has an effect on individual Board Member grant rates. Consider, for instance, A.C. Knevel, whose grant rate was only 29.71%. This below average rate seems more evenhanded when one considers that the majority of the cases Knevel decided in 2006 involved claimants from countries with low grant rates. In fact, as Table 3 shows, the average grant rate adjusted to take into account the countries of origin of the claimants whose cases Knevel decided in 2006 is 29.60%. That is to say, Knevel’s low grant rate closely tracks the expected grant rate for adjudicators hearing the set of cases that he decided.

35. *Ibid.*

36. For a description of the requirements for a claim to be expedited, see Immigration and Refugee Board of Canada, *Fast Track Policy: Expedited Process*, Policy no. 2005-02, effective March 14, 2005, online: Immigration and Refugee Board of Canada <http://www.irb-cisr.gc.ca/en/references/policy/policies/exprocess_e.htm>. For an evaluation of the expedited procedure, see Consulting and Audit Canada, *Formative Evaluation of the IRB’s Streamlining Initiative* (Ottawa: IRB, 2005) (Project No. 520-1035) at 6.

| Table 3: Principal Claimant Refugee Decisions by A.C. Knevel in 2006 | | | |
|--|------------|----------------|--|
| Country Of Origin (COO) | Decisions | Grant Rate (%) | Expected Grant Rate Based on IRB Average for COO in 2006 (%) |
| Albania | 5 | 40.00 | 55.41 |
| Antigua and Barbuda | 1 | 0.00 | 0.00 |
| Argentina | 3 | 0.00 | 12.50 |
| Barbados | 1 | 0.00 | 40.00 |
| Brazil | 5 | 40.00 | 17.46 |
| Chile | 2 | 0.00 | 17.65 |
| Costa Rica | 1 | 100.00 | 10.53 |
| Cuba | 4 | 50.00 | 82.69 |
| Grenada | 3 | 0.00 | 26.92 |
| Guyana | 10 | 30.00 | 29.01 |
| Ireland | 1 | 100.00 | 100.00 |
| Jamaica | 16 | 37.50 | 29.91 |
| Mexico | 3 | 66.67 | 31.22 |
| Philippines | 21 | 14.29 | 15.66 |
| Poland | 2 | 0.00 | 10.00 |
| Portugal | 6 | 16.67 | 2.44 |
| Saint Lucia | 20 | 20.00 | 23.48 |
| Saint Vincent | 20 | 35.00 | 36.58 |
| Somalia | 5 | 100.00 | 93.15 |
| Trinidad & Tobago | 8 | 25.00 | 24.14 |
| USA | 1 | 0.00 | 0.00 |
| Total | 138 | 29.71 | 29.60 |

It must be acknowledged, then, that the IRB is right to suggest that differential grant rates among adjudicators are due, in part, to patterns in the types of cases assigned to particular Board Members. However, this article will show that the data nonetheless suggests that this is not the whole story.

A. Expedited Claims

First, with respect to the argument regarding expedited claims, the data shows that strong variations persist even when expedited positive decisions are filtered out of the analysis. In 2006, the IRB's average grant rate excluding expedited positive claims was 51.06%, with a standard deviation of 25.24 across individual Board Members. This is only slightly lower than the average grant rate of 54.08% overall, with a standard deviation of 26.31. In other words, while expedited claims do have a noticeable impact on the grant rates of some Board Members and on the overall grant rate at the IRB, they do not account for a significant proportion of the variance in grant rates across Board Members. To the contrary, as Table 4 shows, Board Member grant rates fluctuate dramatically even when expedited claims are excluded.

Table 4: Five Highest and Lowest Grant Rates (Excluding Expedited Positive Decisions) in Principal Claimant Refugee Cases in 2006 for IRB Members Deciding at Least 50 Cases

| | Board Member | Decisions | Grant Rate (Excl. Exp. Pos.) (%) |
|-----------------------------|-----------------------|-------------|---|
| Lowest Five | Houde, Roger | 90 | 6.67 |
| | Ghosh, Suparna | 119 | 9.24 |
| | Wong, Bing | 68 | 11.76 |
| | Freilich, Miriam | 123 | 13.01 |
| | Weir, Margaret | 128 | 16.41 |
| | Subtotal | 528 | 11.74 |
| Highest Five | Pelletier, Jean-Paul | 81 | 82.72 |
| | Smith-Gordon, Maureen | 67 | 85.07 |
| | Lederq, Dominique | 80 | 91.25 |
| | Kitchener, Susan | 107 | 92.52 |
| | Ethier, Gilles | 138 | 95.65 |
| | Subtotal | 473 | 90.49 |
| Total at IRB in 2006 | | 9984 | 51.06 |

B. Regional Specialization

The IRB's second contention, that differential grant rates are a result of regional specialization by Board Members, also fails to account for the full variations. In fact, the grant rates of individual Board Members continue to vary significantly, even when the analysis is restricted to cases involving claimants from particular countries of origin. As Table 5 shows, for example, grant rates in cases concerning claimants from China, India and Nigeria differ significantly among adjudicators who decided the most cases from these countries.

Table 5: Grant Rates of IRB Members Deciding the Largest Number of Principal Claimant Refugee Cases from Selected Countries of Origin (COO) in 2006

| | Board Member | Decisions from COO | Grant Rate in Decisions from COO (%) | IRB Average Grant Rate for COO (%) | Variation (%) |
|---------|----------------------|-----------------------|---|---|------------------|
| China | Pinkney, Thomas | 113 | 82.3 | 55.22 | 27.08 |
| | Tinker, Diane | 108 | 43.52 | 55.22 | -11.7 |
| | Prabhakara, Puttavee | 97 | 51.55 | 55.22 | -3.67 |
| | Ellis, Steve | 90 | 31.11 | 55.22 | -24.11 |
| | Israel, Milton | 82 | 68.29 | 55.22 | 13.07 |
| India | Lederq, Dominique | 48 | 91.67 | 48.09 | 43.58 |
| | Hamelin, Michael | 37 | 27.03 | 48.09 | -21.06 |
| | Pelletier, Jean-Paul | 27 | 74.07 | 48.09 | 25.99 |
| | Crelinsten, Michael | 24 | 37.5 | 48.09 | -10.59 |
| | Smith, Diane | 18 | 33.33 | 48.09 | -14.75 |
| Nigeria | Kitchener, Susan | 47 | 91.49 | 41.85 | 49.64 |
| | Sajtos, Joanne | 47 | 27.66 | 41.85 | -14.19 |
| | Sandhu, Ken | 27 | 14.81 | 41.85 | -27.03 |
| | Savage, Harvey | 27 | 48.15 | 41.85 | 6.3 |
| | Grewal, Jiti Singh | 26 | 42.31 | 41.85 | 0.46 |

Along similar lines, Table 6 provides information about the adjudicators with the largest variance between actual and expected grant rates based on country of origin. It is worth noting that Table 6 demonstrates not only that there are important disparities in grant rates that cannot be explained on the basis of regional specialization, but that these disparities cannot be attributed to expedited claims. In fact, the table shows that large differences between actual and expected grant rates adjusted for country of origin are present, regardless of whether expedited positive decisions are included in the calculations.

| Table 6: Ten Extreme Variations Between Actual and Expected Grant Rates Adjusted to Reflect Country of Origin in Principal Claimant Refugee Claims in 2006 for IRB Members Deciding at Least 50 Cases | | | | | | | | |
|--|----------------------|------------------|-----------------------|---|--------------------------------|--|----------------------|--|
| | Board Member | Decisions | Grant Rate (%) | Grant Rate (Excl. Exp. Pos.) (%) | Expected Grant Rate (%) | Expected Grant Rate (Excl. Exp. Pos.) (%) | Variation (%) | Variation (Excl. Exp. Pos.) (%) |
| Five Extreme Negative Variations | Wilson, Wilbert | 72 | 16.67 | 16.67 | 52.24 | 51.72 | -35.58 | -35.06 |
| | Mckenzie, Gordon | 56 | 17.86 | 17.86 | 53.98 | 50.97 | -36.13 | -33.11 |
| | Randhawa, Sarwanjit | 84 | 19.05 | 19.05 | 57.9 | 51.34 | -38.85 | -32.29 |
| | Faure, Michel | 59 | 22.03 | 22.03 | 56.41 | 53.51 | -34.38 | -31.47 |
| | Sandhu, Ken | 111 | 31.53 | 28.97 | 60.22 | 56.46 | -28.69 | -27.49 |
| Five Extreme Positive Variations | Smith-Gordon, Mauree | 67 | 85.07 | 85.07 | 58.94 | 58.36 | 26.13 | 26.72 |
| | Moss, Joel | 108 | 82.41 | 82.41 | 51.15 | 49.86 | 31.25 | 32.55 |
| | Ethier, Gilles | 138 | 95.65 | 95.65 | 62.61 | 60.69 | 33.04 | 34.96 |
| | Kitchener, Susan | 107 | 92.52 | 92.52 | 55.63 | 53.71 | 36.89 | 38.81 |
| | Lederocq, Dominique | 80 | 91.25 | 91.25 | 53.05 | 51.75 | 38.2 | 39.5 |
| Total at IRB in 2006 | | 9984 | 54.08 | 51.06 | 54.08 | 51.06 | N/A | N/A |

C. Case Type Specialization

It would seem, then, that neither of the two specific explanations offered by the IRB for the large variations in refugee adjudicator grant rates is borne out by the data. However, to fully evaluate the IRB's general argument that variations in Board Member grant rates reflect patterns in case assignment, it is worth testing alternative explanations for those variations that were not explicitly offered in the letter appended to the IRB's response to the Access to Information Request.

One alternative explanation³⁷ presumes that Board Members not only specialize in claims from particular countries, but also in specific types of cases from those countries.³⁸ If the different types of cases have distinct average grant rates, then this would account for the variation in Board Member grant rates. For example, imagine that two Board Members hear a large number of unexpedited cases involving claimants from Mexico. Suppose further that the first Board Member specializes in cases involving Mexicans alleging a fear of organized criminals or corrupt government officials. According to the data obtained through Access to Information procedures, such cases had a grant rate of 23.05% in 2006. Next, hypothesize that the second Board Member hears a large number of cases involving Mexicans who allege a fear of domestic violence or other forms of gender based violence. In 2006, such cases had a grant rate of 46.28%. All other things being equal, the second hypothetical Board Member ought to have a higher grant rate than the first. Table 7 shows similar differential average grant rates for particular types of claims from selected countries of origin, thereby providing some support for this possible explanation for divergent grant rates.

Table 7: Average IRB Grant Rates in Principal Claimant Refugee Claims in 2006 for Selected Countries of Origin (COO), Broken Down by Claim Type

| COO | Claim Type | Decisions | Grant Rate (%) | Grant Rate (Excl. Exp. Pos.) (%) |
|--------------------------|-------------------------------------|-------------|----------------|----------------------------------|
| Bangladesh | Criminality/Corruption | 7 | 42.86 | 42.86 |
| | Gender/Domestic | 9 | 33.33 | 33.33 |
| | Nationality/Ethnicity/Race/Religion | 26 | 73.08 | 63.16 |
| | Political Activities/Occupations | 6 | 83.33 | 83.33 |
| | Political Organization | 78 | 38.46 | 38.46 |
| | Religion | 1 | 100 | 100 |
| | Subtotal | 127 | 48.03 | 45 |
| Guyana | Criminality/Corruption | 86 | 22.09 | 22.09 |
| | Gender/Domestic | 26 | 46.15 | 46.15 |
| | Nationality/Ethnicity/Race/Religion | 8 | 25 | 25 |
| | Other | 4 | 25 | 25 |
| | Political Activities/Occupations | 5 | 20 | 20 |
| | Political Organization | 27 | 22.22 | 22.22 |
| | Sexual Orientation | 6 | 100 | 100 |
| | Subtotal | 162 | 29.01 | 29.01 |
| Ukraine | Criminality/Corruption | 25 | 44 | 44 |
| | Gender/Domestic | 59 | 76.27 | 75.86 |
| | Nationality/Ethnicity/Race/Religion | 24 | 62.5 | 60.87 |
| | Other | 6 | 50 | 50 |
| | Political Activities/Occupations | 7 | 14.29 | 14.29 |
| | Political Organization | 4 | 0 | 0 |
| | Sexual Orientation | 37 | 59.46 | 59.46 |
| | Subtotal | 162 | 59.88 | 59.38 |
| IRB Total in 2006 | | 9984 | 54.08 | 51.06 |

This possible explanation nonetheless fails to account for the full variation in Board Member grant rates. As Table 8 indicates, extreme variations persist between actual and expected grant rates based on IRB averages for the subset of cases the individual Board Members decided, even when these expected grant rates are adjusted to reflect both country of origin and claim type. It is worth noting that the variations

| Table 8: Ten Extreme Variations Between Actual and Expected Grant Rates Adjusted to Reflect Country of Origin and Claim Type in Principal Claimant Refugee Claims in 2006 for IRB Members Deciding at Least 50 Cases | | | | | | | | |
|--|----------------------|-----------|----------------|----------------------------------|-------------------------|---|---------------|---------------------------------|
| | Board Member | Decisions | Grant Rate (%) | Grant Rate (Excl. Exp. Pos.) (%) | Expected Grant Rate (%) | Expected Grant Rate (Excl. Exp. Pos.) (%) | Variation (%) | Variation (Excl. Exp. Pos.) (%) |
| Five Extreme Negative Variations | Wilson, Wilbert | 72 | 16.67 | 16.67 | 51.56 | 51.05 | -34.89 | -34.38 |
| | Randhawa, Sarwanjit | 84 | 19.05 | 19.05 | 55.09 | 49.95 | -36.04 | -30.91 |
| | Faure, Michel | 59 | 22.03 | 22.03 | 55.62 | 52.14 | -33.59 | -30.1 |
| | Houde, Roger | 90 | 6.67 | 6.67 | 34.31 | 34.22 | -27.64 | -27.55 |
| | Sandhu, Ken | 111 | 31.53 | 28.97 | 58.22 | 53.96 | -26.69 | -24.99 |
| Five Extreme Positive Variations | Pelletier, Jean-Paul | 81 | 82.72 | 82.72 | 58.86 | 56.98 | 23.85 | 25.73 |
| | Moss, Joel | 108 | 82.41 | 82.41 | 51.17 | 49.92 | 31.24 | 32.49 |
| | Ethier, Gilles | 138 | 95.65 | 95.65 | 63 | 61.48 | 32.65 | 34.17 |
| | Kitchener, Susan | 107 | 92.52 | 92.52 | 59.88 | 58.29 | 32.64 | 34.24 |
| | Lederocq, Dominique | 80 | 91.25 | 91.25 | 52.1 | 50.67 | 39.15 | 40.58 |
| Total at IRB in 2006 | | 9984 | 54.08 | 51.06 | 54.08 | 51.06 | N/A | N/A |

37. This explanation was offered by the IRB in a response a newspaper article setting out a preliminary version of the statistics outlined in this article. See Benoit Chiquette, Director of Communications, IRB, News Release, "Letter to the Editor of the Toronto Star dated August 30, 2007 concerning the Ideas page of August 29, 2007" online: Immigration and Refugee Board of Canada <http://www.irb-cisr.gc.ca/en/media/news/2007/star070830_e.htm>. See also Sean Rehaag, "Adjudication lottery for refugees" *The Toronto Star* (30 Aug 2007) A8.
38. IRB Letter, *supra* note 28, which states that the IRB's internal database categorises cases into 17 different claim types: (1) Age/Health, (2) Criminality/Corruption, (3) Gender, (4) Gender/Domestic Violence, (5) Military Service, (6) Nationality/Ethnicity/Race, (7) Nationality/Ethnicity/Race/Religion, (8) Non-Specific Persecution, (9) Other, (10) Other State Policy Issues, (11) Political Activism, (12) Political Activities/Occupations, (13) Political Organization, (14) Prosecution, (15) Religions, (16) Sexual Orientation, and (17) State. A number of these categories partly overlap, and thus categorization of particular cases will inevitably be imprecise. However, for present purposes it is sufficient to note that, to the extent that case type is a relevant consideration in the assignment of cases to particular Board Members, such assignment will reflect the way in which the IRB classifies the cases in these 17 categories.

listed in Table 8 are slightly lower than the variations between actual and expected grant rates adjusted to reflect only country of origin as set out in Table 6. For instance, the variance between Wilbert Wilson's actual and expected grant rate adjusted for country of origin was 35.58%, whereas the discrepancy between his actual and expected grant rate adjusted for both country of origin and claim type was 34.89%. However, it is important to appreciate that the differences between the variations listed in Table 6 and 8 are very small. In other words, while claim type specialization may be a contributing factor to differential grant rates among Board Members, it is not a particularly significant one.³⁹

D. Variations Across IRB Offices

There is another possible explanation for grant rate variation related to patterns in case assignment that was not explicitly put forward by the IRB. This explanation is that adjudicators in different IRB offices in Canada⁴⁰ encounter subsets of refugee claimants with distinct attributes that are not captured by statistics broken down merely by country of origin or claim type. For example, refugee claimants may settle disproportionately in particular regions of Canada by virtue of factors such as racial, family, economic or political ties and networks. Since these factors may have an impact on refugee claimants' experiences of persecution in their home countries, patterns in regional settlement may produce understandable variations in grant rates among adjudicators in different IRB offices who hear otherwise apparently similar cases.⁴¹

Such an explanation arguably finds some support through significant variations between average and country specific grant rates across IRB offices. As Table 9 indicates, in 2006, there were noticeable variations in the average grant rates across the five IRB offices, with the Calgary office having the lowest grant rate (46.76%), and the Vancouver office having the highest grant rate (54.38%). Table 10 breaks down the statistics further, demonstrating that the grant rates in cases involving refugee claimants from major source countries, including China and India, fluctuated quite significantly across IRB offices.

39. These differences may also reflect the greater influence of a single Board Member's decisions on the average grant rates for the relatively small subsets of cases involving particular claim types for specific countries of origin.

40. The IRB maintains 5 offices: Atlantic, Calgary, Montreal, Toronto and Vancouver.

41. A former IRB Chairperson offers an example of such possible variations: "For example, in the past year, the majority of the claimants arriving on the West Coast from the People's Republic of China (PRC) were from Fujian province, while the majority of PRC claimants in the Toronto office were from Tibet where there is a significant documentary record of human rights abuses by the state." Showler, *supra* note 17 at "Remedial Initiatives."

| Table 9: Grant Rates at IRB Offices in Principal Claimant Refugee Claims in 2006 | | | |
|--|-------------|----------------|----------------------------------|
| IRB Office | Decisions | Grant Rate (%) | Grant Rate (Excl. Exp. Pos.) (%) |
| Atlantic | 90 | 48.89 | 47.73 |
| Calgary | 278 | 46.76 | 44.98 |
| Montreal | 2934 | 54.43 | 50.28 |
| Toronto | 6191 | 54.29 | 51.55 |
| Vancouver | 491 | 54.38 | 53.53 |
| Total | 9984 | 54.08 | 51.06 |

| Table 10: Grant Rates in Principle Claimant Refugee Cases in 2006 From Selected Countries of Origin (COO), Broken Down by IRB Office | | | | |
|--|--------------|-------------|----------------|----------------------------------|
| COO | IRB Office | Decisions | Grant Rate (%) | Grant Rate (Excl. Exp. Pos.) (%) |
| China | Atlantic | 0 | N/A | N/A |
| | Calgary | 4 | 75.00 | 75.00 |
| | Montreal | 13 | 53.85 | 53.85 |
| | Toronto | 1011 | 55.59 | 55.59 |
| | Vancouver | 102 | 50.98 | 50.00 |
| | Total | 1130 | 55.22 | 55.14 |
| India | Atlantic | 0 | N/A | N/A |
| | Calgary | 8 | 25.00 | 25.00 |
| | Montreal | 216 | 58.80 | 58.60 |
| | Toronto | 101 | 35.64 | 35.64 |
| | Vancouver | 41 | 26.83 | 26.83 |
| | Total | 366 | 48.09 | 47.95 |
| Mexico | Atlantic | 8 | 12.50 | 12.50 |
| | Calgary | 8 | 0.00 | 0.00 |
| | Montreal | 614 | 31.92 | 31.81 |
| | Toronto | 448 | 30.13 | 30.13 |
| | Vancouver | 72 | 37.50 | 37.50 |
| | Total | 1150 | 31.22 | 31.16 |
| Total at IRB in 2006 | | 9984 | 54.08 | 51.06 |

As Table 11 shows, however, the variations in grant rates across adjudicators within particular IRB offices were more pronounced than variations in grant rates across IRB offices. Thus, for example, in cases involving Chinese claimants in Toronto, Thomas Pinkney (82.30%) granted refugee status far more frequently than Diane Tinker (43.52%). This demonstrates that the effect of regional settlement patterns among refugee claimants—like the other explanations thus far canvassed—fails to adequately account for the sharp variations in the grant rates of individual Canadian refugee adjudicators.

Table 11: Grant Rates of 4 Board Members in Selected IRB Offices Deciding the Largest Number of Principal Claimant Refugee Cases From Selected Countries of Origin (COO) in 2006

| COO | IRB Office | Board Member | Decisions | Grant Rate (%) | Grant Rate (Excl. Exp. Pos.) (%) |
|----------------------|---------------------|----------------------|-----------|----------------|----------------------------------|
| China | Vancouver | Beckow, Stephen Mark | 43 | 41.86 | 41.86 |
| | | French, Susan | 16 | 81.25 | 81.25 |
| | | Hitchcock, Fred | 11 | 72.73 | 72.73 |
| | | Pattee, Ross | 9 | 33.33 | 33.33 |
| | | Total (Vancouver) | 102 | 50.98 | 50.00 |
| | Toronto | Pinkney, Thomas | 113 | 82.30 | 82.30 |
| | | Tinker, Diane | 108 | 43.52 | 43.52 |
| | | Prabhakara, Puttavee | 97 | 51.55 | 51.55 |
| | | Ellis, Steve | 90 | 31.11 | 31.11 |
| | | Total (Toronto) | 1011 | 55.59 | 55.59 |
| | Total (all offices) | | 1130 | 55.22 | 55.14 |
| India | Montreal | Lederq, Dominique | 48 | 91.67 | 91.67 |
| | | Hamelin, Michael | 37 | 27.03 | 27.03 |
| | | Pelletier, Jean-Paul | 27 | 74.07 | 74.07 |
| | | Crelinsten, Michael | 24 | 37.50 | 37.50 |
| | | Total (Montreal) | 216 | 58.80 | 58.60 |
| | Toronto | Smith, Diane | 18 | 33.33 | 33.33 |
| | | Fraser, Gayle | 15 | 6.67 | 6.67 |
| | | Makonnen, Yilma | 12 | 58.33 | 58.33 |
| | | Railton, James | 12 | 16.67 | 16.67 |
| | | Total (Toronto) | 101 | 35.64 | 35.64 |
| Total (all offices) | | 366 | 48.09 | 47.95 | |
| Total at IRB in 2006 | | | 9984 | 54.08 | 51.06 |

VI. IMPLICATIONS OF THE STUDY

This article has shown that, according to data obtained through Access to Information procedures, there are vast variations in the grant rates of Canadian refugee adjudicators. The article has also shown that the grant rates of particular refugee adjudicators appear to be influenced by the number of expedited claims adjudicators are assigned, by regional and claim type specialization, as well as by the IRB office to which Board Members belong. However, while these factors may influence grant rates, they fail to offer a full account of the dramatic grant rate disparities. A number of tentative observations are in order.

A. Extraneous Factors in Refugee Adjudication

First, a reasonable inference to draw from this data is that the vast unexplained variations in Board Member grant rates are a result of factors other than patterns in case assignment, likely factors related to the personal characteristics of particular Board Members. Further empirical studies are warranted both to verify this inference and

to determine exactly what types of personal traits best account for the divergent rates. Factors that are available through public sources and that would be particularly interesting to measure in future research include: the political party of appointment; the length of time served on the IRB; whether the adjudicator has legal training; prior professional positions occupied (i.e. refugee lawyer, civil servant, etc.); country of origin; first language; visible minority affiliations; and gender.

It is worth noting that there is a small but growing body of empirical scholarship that measures the influence of various personal characteristics of judges on adjudicative outcomes.⁴² Thus far, most such scholarship in Canada has concentrated on appellate level decisions.⁴³ Among the most comprehensive empirical analyses of the effects of the personal characteristics of judges on Canadian adjudication is a recent study by James Stribopoulos & Moin Yahya.⁴⁴ Their study compares the influence of two factors on Ontario Court of Appeal outcomes: the gender and the party of appointment of the judges hearing appeals. According to their analysis, "as between the two variables, gender may matter more than party of appointment Most interestingly, there appears to be greater cohesiveness in the decisions of judges of the same gender than in those from the same party of appointment."⁴⁵

At present, no similar studies have been undertaken in the context of Canadian refugee adjudication. However, a recent large-scale empirical study has examined various levels of US refugee adjudication along these lines.⁴⁶ Along with other data considered, the study examines 140,428 asylum applications decided in US Immigration Court from January 2000 to August 2004.⁴⁷ These are examples of the more pertinent findings of the study:

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42. See e.g. Glendon A. Schubert, *Quantitative Analysis of Judicial Behavior* (Glencoe, Ill.: Free Press, 1959); Sheldon Goldman, "Voting Behavior on the United States Courts of Appeals Revisited" (1975) 69 *American Political Science Review* 491; Deborah J. Barrow, Gary Zuk & Gerard S. Gryski, *The Federal Judiciary and Institutional Change* (Ann Arbor: University of Michigan Press, 1996); Theodore W. Ruger *et al.*, "The Supreme Court Forecasting Project: Legal and Political Science Approaches to Predicting Supreme Court Decisionmaking" (2004) 104 *Colum. L. Rev.* 1150; Russell Smyth, "Explaining Voting Patterns on the Latham High Court 1935–50" (2002) 26 *Melbourne U.L. Rev.* 88; Cass R. Sunstein, David Schkade & Lisa Michelle Ellman, "Ideological Voting on Federal Courts of Appeals: A Preliminary Investigation" (2004) 90 *Va. L. Rev.* 301.
43. Sidney Raymond Peck, "A Behavioural Approach to the Judicial Process: Scalogram Analysis" (1967) 5 *Osgoode Hall L.J.* 1; Thaddeus Hwang, "A Review of Quantitative Studies of Decision Making in the Supreme of Canada" (2003) 30 *Man. L.J.* 353; Sujit Choudhry & Claire E. Hunter, "Measuring Judicial Activism on the Supreme Court of Canada: A Comment on *Newfoundland (Treasury Board) v. NAPE*" (2003) 48 *McGill L.J.* 525; Peter McCormick, "The Choral Court: Separate Concurrence and the McLachlin Court, 2000–2004" (2005–2006) 37 *Ottawa L. Rev.* 1.
44. James Stribopoulos & Moin A. Yahya, "Does a Judge's Party of Appointment or Gender Matter to Case Outcomes?: An Empirical Study of the Court of Appeal for Ontario" (2007) 45 *Osgoode Hall L.J.* 315.
45. *Ibid.* at 353.
46. Jaya Ramji-Nogales, Andrew I. Schoenholtz & Phillip G. Schrag, "Refugee Roulette: Disparities in Asylum Adjudication" (2007) 60 *Stan. L. Rev.* 295.
47. *Ibid.* at 394–395.

- . Female Immigration Court judges had significantly higher grant rates (53.8%) than male judges (37.3%);⁴⁸
- . Immigration Court judges who had never worked previously for Immigration and Naturalization Services (INS) or the Department of Homeland Security (DHS) had higher grant rates (48.2%) than those who had worked for these government agencies for 1–5 years (42.9%), for 6–10 years (40.2%) or for 11 or more years (31.3%); and,⁴⁹
- . Grant rates varied depending on whether Immigration Court judges had prior work experience with the military (37.4%), INS or DNS (38.9%), the government (excluding INS or DNS) (39.6%), private legal practice (46.3%), academia (52.3%), and/or not-for-profit organizations (55.4%).⁵⁰

Taken together, the authors of the study conclude:

Whether an asylum applicant is able to live safely in the United States or is deported to a country in which he claims to fear persecution is very seriously influenced by a spin of the wheel of chance; that is, by a clerk's random assignment of an applicant's case to one asylum officer rather than another, or one immigration judge rather than another.⁵¹

Another promising research avenue—in addition to undertaking similar large-scale multi-year empirical analysis to measure outcomes in Canadian refugee adjudication against publicly discernable personal characteristics of refugee adjudicators—would involve structured interviews with Board Members. The information compiled through interviews could then be indexed against data regarding the cases decided by the interviewed Board Members. While such a study would require the permission of the IRB, it would be in the interest of the IRB to participate voluntarily. Indeed, such a study would offer the IRB invaluable information about how to best design its screening procedures for appointees. Moreover, it would also help the IRB to identify further opportunities for refugee adjudicator training and other procedures designed to increase consistency in decision-making.

François Crépeau, Delphine Nakache and Janet Cleveland have recently conducted interviews with several former Board Members that provide an approximation of what such a study might indicate.⁵² According to the interviewed former Board Members, there are many personal characteristics that significantly influence the decision-making process of refugee adjudicators. These characteristics include general qualities, such as empathy, open-mindedness, cross-cultural sensitivity, lucidity and

48. *Ibid.* at 342.

49. *Ibid.* at 347.

50. *Ibid.* at 345–46.

51. *Ibid.* at 378.

52. Crépeau & Nakache, *supra* note 18.

common sense. One particularly frequently cited factor was the way in which different Board Members understand their institutional role as refugee adjudicators. According to the former Board Members, some adjudicators see their role as giving effect to Canada's international human rights obligations. Such adjudicators reportedly err on the side of caution, in that, when they are uncertain as to whether a claimant meets the refugee definition, they accord refugee protection in order to avoid the possibility of erroneously returning someone to a country where they face persecution. Therefore, these adjudicators would presumably have above average refugee grant rates. Other Board Members, however, reportedly see their role as protecting the integrity of Canadian border control processes, and in particular, shielding the refugee determination systems against fraudulent claims. For such Board Members, detecting falsehood—especially by discerning discrepancies between refugee claimant testimony and documentary evidence—is the primary aim of refugee hearings. It seems likely that such adjudicators have disproportionately low grant rates.⁵³

Unfortunately, without an interdisciplinary study that identifies these and other personal characteristics of Board Members, and then indexes such characteristics against outcomes in refugee adjudication, it is difficult to empirically evaluate these observations made by former Board Members. The first major implication of the data presented in this article, then, is that a larger multi-year empirical study of IRB adjudication is warranted.

B. The IRB Appointments Process

A second key implication of the data obtained through Access to Information procedures is that, because the identity of Board Members appears to be an important factor in refugee claim outcomes, the process through which Board Members are appointed must be carefully scrutinized.

Because the IRB is Canada's largest administrative tribunal,⁵⁴ IRB appointments provide frequent occasions for political patronage. Such patronage allows the governing political party to fill important positions of authority with those who share the party's outlook, and to reward those faithful to the party with relatively high paid government posts.⁵⁵ Political patronage in IRB appointments has long proven to be

53. *Ibid.*

54. Treasury Board of Canada Secretariat, *IRB Report on Plans and Policies 2002–2003*, Estimates, online: Treasury Board of Canada Secretariat <http://www.tbs-sct.gc.ca/est-pre/20022003/irb-cisr/IRB0203rpp01_e.asp> ("Created by an Act of Parliament in 1989, the IRB is the largest administrative tribunal" at 22).

55. Current salaries for Board Members are in the range of \$95,500—\$112,300, according to Immigration and Refugee Board of Canada, "Statement of Qualifications for IRB GIC Members" online: Immigration and Refugee Board of Canada <http://www.irb-cisr.gc.ca/en/about/employment/members/soq_e.htm>.

highly controversial.⁵⁶ As far back as 1990, for example, the Canadian Bar Association (CBA) decried the political considerations at play in IRB appointments. According to the CBA, when administrative tribunals such as the IRB engage in decision-making processes that are similar in principle to those employed in adjudicative institutions, the members of these administrative tribunals should not be selected on the basis of their political orientations or connections.⁵⁷

In recent years, some steps have been taken towards reducing the role of political patronage in IRB appointments.⁵⁸ In March of 2004, responding to concerns expressed in an Auditor General's Report regarding the quality of IRB appointees,⁵⁹ the Minister of Citizenship and Immigration announced reforms to the appointment process. The new procedure involved two separate advisory bodies, one internal and one external to the IRB. The Chair of the IRB and the Minister jointly named the members of the external body, which was meant to be "independent and representative of Canadians."⁶⁰ This body, known as the Advisory Panel, was responsible for initial screening of applications. Once the Advisory Panel vetted candidates, their qualifications were then scrutinized further by the internal body, known as the Selection Board. The Chair of the IRB named the members of the Selection Board, who were to be "experts with an in-depth understanding of the IRB and its decision-making processes."⁶¹ The role of the Selection Board was to provide the Minister with a list of "highly qualified candidates"⁶² for IRB appointments. The Minister then exercised discretion over who, among those candidates, would receive appointments.

Initial reaction to the new process was mixed.⁶³ Some, including the Chair of the IRB, publicly lauded the new appointments procedure as a dramatic improvement

56. See e.g. Lorne Waldman, "Political patronage is bad—and dangerous too" *The Toronto Star* (17 October 1990) A25; T. Godfrey, "Board Reform Urged" *The Toronto Star* (20 June 1994) A25; Norm Doyle, "Tory MP wants review of patronage appointments to IRB" *The Hill Times* (2 February 1998) 21; Allan Thompson, "Refugee board under fire for political appointments" *The Toronto Star* (14 June 2003) H1.

57. *Report of the Canadian Bar Association Task Force on the Independence of Federal Administrative Tribunals and Agencies in Canada* (Ottawa: Canadian Bar Association, 1990) at 60.

58. For a systemic review of the history of politicized IRB appointments, as well as a discussion of recent efforts to reform the appointment process, see Cr  peau & Nakache, *supra* note 18.

59. 1997 December Report of the Auditor General of Canada (Ottawa: Office of the Auditor General of Canada, 1997), ss. 25.61–25.70, online: Office of the Auditor General of Canada <http://www.oag-bvg.gc.ca/internet/English/aud_ch_oag_1997_25_e_8111.html>. See especially s. 25.70: "The government should ensure that the selection process for Board members provides greater certainty that appointments or reappointments to the Immigration and Refugee Board are based on the qualifications needed to respond to the complexity and the importance of the task."

60. Citizenship and Immigration Canada, Background, "Reform of the Immigration and Refugee Board's Governor in Council appointment process" (16 March 2004), online: Citizenship and Immigration Canada <<http://www.cic.gc.ca/english/department/media/backgrounders/2004/2004-03-16.asp>>.

61. *Ibid.*

62. *Ibid.*

63. See generally Cristin Schmitz, "Reform of IRB appointments gets mixed reception from Bar" *The Lawyers Weekly* (26 March 2004) 23:44 at 1.

upon the prior practice.⁶⁴ Other commentators criticized the new process on the grounds that it left avenues open for the Minister to make political decisions regarding appointments, as well as regarding the members of the Advisory Board.⁶⁵

More recently, however, the new appointment process has drawn criticism for providing too little room for Ministerial input into the initial screening process. Most notably, a 2007 report, prepared for the Minister of Citizenship and Immigration by the Public Appointments Commission Secretariat, recommended that the Minister have more involvement in the early stages of candidate screening.⁶⁶ According to the report, “[t]he Minister . . . [has] a direct and legitimate interest in both the appointment process and in the development of the lists of potential IRB Members which are provided for their consideration”⁶⁷ Taking this interest to heart, the Report recommended that the two advisory bodies be merged, and that the Minister directly appoint at least half of the members of the newly merged body.⁶⁸

In July 2007, the Minister of Citizenship and Immigration announced the merger of the Advisory Panel and the Selection Board into a single body. This new body is composed of the Chair of the IRB, three members selected by the Chair, and three members from outside the IRB selected jointly by the Minister and the Chair.⁶⁹ Refugee advocates immediately decried this announcement as amounting to “a discouraging repoliticization of the selection process.”⁷⁰ This objection was perhaps unsurprising, considering that when the recommendations were first put forward, the Canadian Bar Association warned:

Given the IRB's history of rampant patronage in the very recent past, it is imperative that nothing be done to permit it to gain a new toehold. If the minister appoints any of the external members of the committee screening IRB board members, it will inevitably lead to an increased public perception that patronage, not merit, plays a role in the appoint-

64. See Jean-Guy Fleury, Chairperson of the IRB, “CISR: un nouveau processus de sélection pour des candidats hautement qualifiés,” Letter to the Editor, *Le Devoir* (10 April 2004) B4.

65. See France Houle & François Crépeau, “La proposition Sgro ne mettra pas fin au patronage: Le gouvernement doit cesser de participer à la sélection des commissaires” *Le Devoir* (7 April 2004) A9: “D’une part, il est encore loisible au gouvernement d’y nommer des personnes ayant des liens étroits avec lui D’autre part, on ne précise pas le nombre de personnes qui siégeront à ce comité: le ministre peut s’assurer qu’il sera dominé par une majorité de personnes qui auront une très bonne compréhension des réalités gouvernementales.”

66. Public Appointments Commission Secretariat, *Governor in Council Appointments Process—Immigration and Refugee Board of Canada* (Ottawa: Public Appointments Commission Secretariat, 2007) online: Citizenship and Immigration Canada <<http://www.cic.gc.ca/english/resources/publications/irb-process.asp#a7>>.

67. *Ibid.* at “Recommendation 4.”

68. *Ibid.* at “Recommendation 4,” “Recommendation 5.”

69. Citizenship and Immigration Canada, News Release, “Minister Finley announces revised selection process for appointments to the IRB” (9 July 2007), online: Citizenship and Immigration Canada <<http://www.cic.gc.ca/english/departement/media/releases/2007/2007-07-09.asp>>.

70. Email from Janet Dench, Executive Director, Canadian Council for Refugees, to the Canadian Council for Refugees Listserv (9 July 2007) “Revised IRB Selection Process” [on file with author].

ment process, thereby undoing the efforts of the 2004 reforms. The injection of political considerations by even one of the members may disturb the deliberations of the selection committee, which has operated on the basis of consensus for the past three years.⁷¹

These debates over the IRB Member appointment process show that one major challenge in establishing an appointments procedure is to strike the proper balance between democratic accountability and Ministerial responsibility for executive appointments, on the one hand, and ensuring the competence and impartiality of IRB appointees, on the other hand. If the ongoing debates regarding the appointment process are to occur in an informed manner, however, the fact that refugee grant rates vary dramatically across Board Members is an important consideration.

Of course, the existence of the variations alone is not necessarily determinative of the appropriate role of political actors in the IRB appointment process. Some might suggest, for example, that if the varying Board Member grant rates are reflective of the personal characteristics of Board Members—and in particular of their views regarding the proper institutional role of refugee adjudicators—then the appointment process ought to enhance the accountability of IRB adjudicators to Parliament. In other words, if refugee determination is a largely political exercise, that exercise ought to be subject to heightened democratic control.

Others, however, may draw the opposite conclusion from large variations in refugee adjudicator grant rates. Such observers may suggest that it is essential to redouble efforts to develop an appointment process that eschews political considerations and that instead seeks out the most highly qualified and competent adjudicators, thereby encouraging the IRB to develop an institutional culture of adjudicative independence.

The second major implication of the data presented in this study, then, is not that wide disparities in refugee grant rates necessarily support one side or another in the ongoing debates on the IRB appointments process. Rather, it is that both sides in these debates ought to address the disparities in IRB Member grant rates and set out what they view as an appropriate response.

C. The Refugee Appeal Division

A third implication of the data presented in this study is that it is essential to rethink a troubling feature of the existing refugee determination process. Currently, a single adjudicator is responsible for making factual findings that determine whether a refugee claimant is entitled to refugee protection—factual findings that are difficult to have reviewed on their merits in the event of error.

71. Submissions to Government, Letter to Citizenship and Immigration Committee by Jean-Philippe Brunet, Chair, National Citizenship and Immigration Section, Canadian Bar Association (16 Apr 2007), online: The Canadian Bar Association <http://www.cba.org/cba/submissions/2007eng/07_22.aspx>.

Prior to Canada's current immigration legislation, passed in 2001, refugee claims were heard by two Board Members. Only one Board Member had to be persuaded in order for the claimant to secure refugee protection.⁷² However, under the current immigration legislation, single Board Member panels now hear the vast majority of refugee claims.⁷³

The data presented in this article raises concerns about the shift from double to single Board Member refugee adjudication. The fact that the identity of Board Members appears to be a major determinant of refugee claim outcomes suggests that the prior practice of two Board Member panels offered refugee claimants important (although admittedly limited) protection against having their claims erroneously denied, simply because the assigned adjudicator had extremely low grant rates. For this to occur under the old system, claimants would have had to be extremely unlucky and be assigned two Board Members with low grant rates. Moreover, IRB management could limit the harm done by adjudicators with especially low grant rates by matching them with more moderate adjudicators.⁷⁴ Under the new single Board Member system, however, these protections are no longer available.

The problematic move from double to single Board Member refugee adjudication was initially justified⁷⁵ on the basis of another change in the new legislation: the establishment of a procedure through which initial refugee determinations may be appealed on their merits to the Refugee Appeal Division (RAD) of the IRB.⁷⁶ However, when the government brought the new legislation into force in 2002, it selectively implemented the legislation. In particular, all of the provisions of the legislation were brought into force except those pertaining to the RAD.⁷⁷ Successive governments have continued to indefinitely delay the implementation of the RAD.⁷⁸

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72. Catherine Dauvergne, "Evaluating Canada's New *Immigration and Refugee Protection Act* in its Global Context" (2003) 41 *Alta. L. Rev.* 725 at 728.
73. *IRPA*, *supra* note 4, s. 163.
74. There is some evidence that this was, in fact, the practice. See Cr  peau & Nakache, *supra* note 18, stating that according to a former Board Member, "[t]hey used to divide members into two categories: you are either weak or strong. They would often put a weak member with a strong member The weak member is the one who can be influenced negative [sic]."
75. *House of Commons Debates*, No.021 (26 Feb 2001) (Hon. Elinor Caplan) ("[B]y combining increased use of single member panels at the board with an internal paper appeal on merit, we will see faster but fairer decisions on refugee claims." at 1171).
76. *IRPA*, *supra* note 4, ss. 110–11, 171.
77. *Order Fixing June 28, 2002 as the Date of the Coming into Force of Certain Provisions of the Act*, SI/2002–97, C. Gaz. 1997.II.1637. The government's purported legal authority for selective implementation flows from the vague boilerplate Coming Into Force provision of the legislation: *IRPA*, *supra* note 4, s. 275 states, "The provisions of this Act come into force on a day or days to be fixed by order of the Governor in Council." [emphasis added].
78. At the time of writing, a Private Members' Bill that would immediately implement the RAD has passed in the House of Commons, and is currently under consideration in the Senate. Bill C-280, *An Act to amend the Immigration and Refugee Protection Act (coming into force of sections 110, 111 and 171)*, 1st Sess., 39th Parl., 2007 (as passed by the House of Commons 30 May 2007).

Of course, even absent the RAD, it remains possible to apply for leave from the Federal Court to have a negative IRB refugee determination judicially reviewed.⁷⁹ However, leave is granted infrequently. In 2001, for example, leave was granted in only 12% of cases where it was requested.⁸⁰ Moreover, in the few refugee determinations that are subject to judicial review, courts are highly reluctant to overturn factual findings based on an adjudicator's firsthand evaluation of the credibility of testimony⁸¹—which is usually a major factor in the case of refugee determinations.⁸²

However, it is worth highlighting one interesting avenue through which judicial review could be deployed, in principle, to correct alleged errors in refugee determinations made by Board Members with disproportionately low grant rates. This possibility would be to not merely challenge the substance of factual findings made in the initial refugee hearing, but also to allege a reasonable apprehension of bias based on statistical evidence of the refugee adjudicator's low grant rates.⁸³ Indeed, there is some case law indicating that courts may be amenable to considering statistical evidence regarding refugee claim grant rates.⁸⁴ It is important to note, however, that inferring a reasonable apprehension of bias would only be appropriate in scenarios where Board Members have extremely low grant rates.⁸⁵ Moreover, the government

79. *IRPA*, *supra* note 4, s. 72.

80. Department of Justice Canada, *Immigration and Refugee Legal Aid Cost Drivers: Final Report* by John Frecker (Ottawa: Legal Aid Research Series, 2002) at 84.

81. *Singh*, *supra* note 10 at para. 59: "Appellate courts are well aware of the inherent weakness of written transcripts where questions of credibility are at stake and thus are extremely loath to review the findings of tribunals which have had the benefit of hearing the testimony of witnesses in person."

82. *Jones & Baglay*, *supra* note 4 at 240 states: "In the majority of cases the turning point in determining whether or not to grant protection is the credibility of the claimant."

83. The basic test for reasonable apprehension of bias was set out in *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369 at 394, 68 D.L.R. (3d) 716 [*National Energy Board* cited to S.C.R.]:
[T]he apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information. . . . [T]hat test is "what would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."

84. *Canadian Council for Refugees v. R.*, 2007 FC 1262 at para. 152; *Geza*, *supra* note 23 at para. 39; *Arrachch v. Canada* (Minister of Citizenship and Immigration), 2006 FC 999, 299 F.T.R. 1 at paras. 6–7; *Nartey v. Canada* (Minister of Employment and Immigration), (1994) 74 F.T.R. 74 (F.C.T.D.) at para. 7. See also *Nyembo v. The Refugee Appeals Tribunal and James Nicholson*, [2007] IESC 25.

85. Extremely low grant rates may not only indicate inconsistencies in adjudication, but also suggest that the Board Member is not rationally adjudicating cases in accordance with the authorizing legislation. This distinction is important because the Supreme Court has held that judicial review cannot be used to correct mere inconsistencies between adjudicators at administrative tribunals. *Ellis-Don Limited v. Ontario (Labour Relations Board)*, 2001 SCC 4, [2001] 1 S.C.R. 211 at para. 28, 194 D.L.R. (4th) 385 [*Ellis-Don* cited to S.C.R.]:

[E]nsuring the consistency of decisions of administrative bodies or tribunals was not a proper function of judicial review by superior courts. Inconsistencies or conflicts between different decisions of the same tribunal would not be reason to intervene, provided the decisions themselves remained within the core jurisdiction of the administrative tribunals and within the bounds of rationality. It [is] on the shoulders of the administrative bodies themselves to develop the procedures needed to ensure a modicum of consistency between its adjudicators or divisions.

should have the opportunity to refute this alleged reasonable apprehension of bias by presenting convincing evidence that the low grant rates of the particular Board Members in question are reasonable in light of the subset of cases they decided.

While this possibility is certainly worth pursuing, given the limits on judicial review,⁸⁶ it remains the case that there are currently no means to consistently correct erroneous refugee determinations made by single Board Member panels at the IRB. A major implication of the data presented in this article, then, is that the massive disparities in grant rates of refugee adjudicators offer further support for immediately implementing the RAD. To be sure, concerns about the consistency of adjudication across Board Members would persist even if the appeal were implemented. In particular, sharp variations in grant rates among Board Members hearing appeals would, if anything, amplify the problem. However, this concern could be addressed, in principle, by appointing to the RAD only experienced Board Members with moderate and consistent track records.⁸⁷

VIII. CONCLUSION

Using new data obtained through formal Access to Information procedures, this study has demonstrated that refugee claim grant rates fluctuated dramatically across individual IRB adjudicators in 2006. Some Board Members granted refugee status in virtually all the cases they heard; others granted refugee status rarely, if at all. Moreover, this study has also shown that, contrary to the arguments put forward by the IRB, patterns in case assignment do not fully account for the grant rate variations. Rather, the identity of Board Members assigned to particular claims appears to be an important factor in refugee claim outcomes.

This conclusion regarding grant rate variations makes it imperative that further empirical studies be undertaken to determine precisely what aspects of adjudicator identities most strongly influence refugee claim outcomes. Furthermore, the procedures through which adjudicators are appointed to the IRB should be scrutinized in light of grant rate disparities. Finally, dramatic grant rate discrepancies offer

86. See text accompanying notes 79–82.

87. For further discussions about the implementation of the RAD, see Stacey A. Saufert, "Closing the Door to Refugees: The Denial of Due Process for Refugee Claimants in Canada" (2007) 70 Sask. L. Rev. 27; Dauvergne, *supra* note 72 at 733; François Cr  peau, Delphine Nakache & Idil Atak, "International Migration: Security Concerns and Human Rights Standards" (2007) 44 Transcultural Psychiatry 311 at 319–320; Canadian Council for Refugees, *supra* note 9; Amnesty International Canada, "Canada: Refugees—No recourse to fair appeal" (21 March 2006), online: Amnesty International Canada <http://www.amnesty.ca/take_action/actions/canada_fair_appeal.php>; Letter from Judith Kumin, UNHCR Representative in Canada, to Minister Coderre, Minister of Citizenship and Immigration (9 May 2002), online: CCR <<http://www.ccrweb.ca/RADpage/PAGE0004.HTM>>.

further support for reconsidering the move in 2002 from dual to single adjudicator refugee hearings, and for the immediate implementation of the Refugee Appeal Division set out in Canada's current immigration legislation.

Refugee determinations literally involve life and death decisions. False negative determinations can lead to refugees being deported to countries where they face persecution, torture or worse. The data presented in this study on Canadian refugee adjudication gives serious cause for concern about how these deeply significant decisions are currently being made.

APPENDIX I

| Variations Between Actual and Expected Grant Rates Adjusted to Reflect Country of Origin (COO) in Principal Claimant Refugee Cases in 2006 | | | | | | | | |
|--|---------------------|-----------|----------------|----------------------------------|--|--|---------------|---------------------------------|
| Board Member | Exp. Pos. Decisions | Decisions | Grant Rate (%) | Grant Rate (Excl. Exp. Pos.) (%) | Expected Grant Rate Based on IRB Average for COO (%) | Expected Grant Rate Based on IRB Average for COO (Excl. Exp. Pos.) (%) | Variation (%) | Variation (Excl. Exp. Pos.) (%) |
| Ahlfeld, Pamela | 5 | 95 | 60,00 | 57,78 | 60,53 | 55,61 | -0,53 | 2,16 |
| Ali Khan, Azhar | | 50 | 64,00 | 64,00 | 62,04 | 59,44 | 1,96 | 4,56 |
| Alidina, Shamshuddin | | 107 | 65,42 | 65,42 | 64,47 | 64,02 | 0,95 | 1,40 |
| Allegra, Giovanna | 22 | 44 | 84,09 | 68,18 | 64,83 | 50,96 | 19,26 | 17,22 |
| Archambault, Donal | | 135 | 40,00 | 40,00 | 54,97 | 54,25 | -14,97 | -14,25 |
| Armstrong, Marnie | | 88 | 68,18 | 68,18 | 56,95 | 53,40 | 11,24 | 14,78 |
| Arvanitakis, Denis | | 39 | 15,38 | 15,38 | 50,13 | 48,50 | -34,75 | -33,12 |
| Ayorech, Benjamin | | 59 | 42,37 | 42,37 | 58,19 | 55,01 | -15,81 | -12,64 |
| B-Duque, Jeannine | | 1 | 0,00 | 0,00 | 29,41 | 29,41 | -29,41 | -29,41 |
| Beaubien-Duque, Jean | 1 | 28 | 21,43 | 18,52 | 57,41 | 55,09 | -35,98 | -36,58 |
| Beauquier, Jean-Pier | 49 | 50 | 100,00 | 100,00 | 79,92 | 55,66 | 20,08 | 44,34 |
| Beckow, Stephen Mark | | 93 | 43,01 | 43,01 | 52,41 | 51,76 | -9,40 | -8,75 |
| Bedard, Joanna | | 82 | 46,34 | 46,34 | 65,36 | 64,36 | -19,02 | -18,02 |
| Berger, Barbara | | 88 | 45,45 | 45,45 | 62,34 | 59,16 | -16,89 | -13,70 |
| Berry, Clifford | | 125 | 56,80 | 56,80 | 58,29 | 57,21 | -1,49 | -0,41 |
| Brennenstuhl, Keith | | 64 | 71,88 | 71,88 | 62,49 | 61,10 | 9,38 | 10,77 |
| Budaci, Stephen | | 94 | 46,81 | 46,81 | 58,56 | 57,03 | -11,75 | -10,22 |
| Case, Complex | | 38 | 71,05 | 71,05 | 64,32 | 61,41 | 6,73 | 9,65 |
| Chakkalakal, Jetty | | 71 | 80,28 | 80,28 | 65,11 | 64,30 | 15,17 | 15,98 |
| Chevrier, Marie | 4 | 67 | 58,21 | 55,56 | 58,83 | 56,09 | -0,62 | -0,54 |
| Collison, Don | | 1 | 0,00 | 0,00 | 33,33 | 33,33 | -33,33 | -33,33 |
| Cooke, David E. | | 137 | 51,82 | 51,82 | 31,09 | 30,23 | 20,74 | 21,59 |
| Costa, Ana | 11 | 37 | 64,86 | 50,00 | 62,38 | 55,63 | 2,48 | -5,63 |
| Crelinsten, Michael | | 66 | 42,42 | 42,42 | 49,94 | 46,64 | -7,52 | -4,22 |
| Cropley, Laurel | | 42 | 50,00 | 50,00 | 56,46 | 56,05 | -6,46 | -6,05 |

REFUGEE ADJUDICATION

| | | | | | | | | |
|---------------------|-----|-----|--------|--------|-------|-------|--------|--------|
| Cunningham, Joan | | 64 | 73,44 | 73,44 | 55,74 | 55,21 | 17,70 | 18,23 |
| Dauns, Paulah | 7 | 12 | 75,00 | 40,00 | 58,29 | 40,59 | 16,71 | -0,59 |
| Davis, William | | 64 | 67,19 | 67,19 | 54,95 | 53,37 | 12,24 | 13,82 |
| Dawson, Richard | 33 | 41 | 80,49 | 0,00 | 66,22 | 2,44 | 14,27 | -2,44 |
| Dawsonx, Richard | 29 | 30 | 100,00 | 100,00 | 77,19 | 70,00 | 22,81 | 30,00 |
| Del Negro, Luciano | | 22 | 86,36 | 86,36 | 32,31 | 32,26 | 54,06 | 54,11 |
| Delisle, Ruth | | 101 | 45,54 | 45,54 | 62,81 | 59,98 | -17,27 | -14,43 |
| Derosse, Tita | 10 | 39 | 48,72 | 31,03 | 60,14 | 55,66 | -11,42 | -24,62 |
| Diallo, Lamine | | 6 | 66,67 | 66,67 | 68,07 | 65,84 | -1,40 | 0,82 |
| Ellis, Steve | | 130 | 43,08 | 43,08 | 55,42 | 54,52 | -12,35 | -11,45 |
| Ethier, Gilles | | 138 | 95,65 | 95,65 | 62,61 | 60,69 | 33,04 | 34,96 |
| Faure, Michel | | 59 | 22,03 | 22,03 | 56,41 | 53,51 | -34,38 | -31,47 |
| Fecteau, Diane | | 52 | 34,62 | 34,62 | 56,49 | 55,60 | -21,87 | -20,99 |
| Fleury, Jean Guy | | 1 | 100,00 | 100,00 | 55,22 | 55,14 | 44,78 | 44,86 |
| Forbes, Cathryn | | 66 | 60,61 | 60,61 | 55,26 | 54,80 | 5,35 | 5,81 |
| Forsey, Dian | | 55 | 34,55 | 34,55 | 47,21 | 46,60 | -12,67 | -12,05 |
| Fortier, Jacques W. | | 19 | 47,37 | 47,37 | 58,76 | 57,93 | -11,39 | -10,56 |
| Fournier, Lloyd | | 95 | 47,37 | 47,37 | 54,28 | 52,49 | -6,91 | -5,12 |
| Fraser, Gayle | | 92 | 43,48 | 43,48 | 55,61 | 53,70 | -12,13 | -10,22 |
| Freeman, Kathleen | 1 | 77 | 57,14 | 56,58 | 51,44 | 50,64 | 5,70 | 5,94 |
| Freilich, Miriam | | 123 | 13,01 | 13,01 | 31,07 | 29,92 | -18,07 | -16,92 |
| French, Susan | 1 | 72 | 76,39 | 76,06 | 55,50 | 54,49 | 20,89 | 21,57 |
| Ghosh, Suparna | | 119 | 9,24 | 9,24 | 32,81 | 31,59 | -23,57 | -22,34 |
| Gibbs, Heather | 19 | 113 | 76,11 | 71,28 | 63,64 | 58,93 | 12,47 | 12,34 |
| Ginsberman, Martin | 173 | 202 | 94,55 | 62,07 | 77,05 | 64,90 | 17,50 | -2,83 |
| Gone, Kamala-Jean | | 10 | 70,00 | 70,00 | 60,55 | 58,76 | 9,45 | 11,24 |
| Goodman, Brian | | 18 | 66,67 | 66,67 | 63,97 | 63,49 | 2,69 | 3,17 |
| Gopie, Kamala-Jean | | 52 | 73,08 | 73,08 | 62,69 | 59,22 | 10,38 | 13,86 |
| Graff, Aida | 1 | 39 | 48,72 | 47,37 | 54,21 | 51,68 | -5,49 | -4,31 |
| Graub, Leon | | 21 | 42,86 | 42,86 | 57,42 | 55,19 | -14,56 | -12,34 |
| Grewal, Jiti Singh | 15 | 104 | 50,96 | 42,70 | 60,28 | 55,39 | -9,32 | -12,69 |
| Griffith, George | | 135 | 39,26 | 39,26 | 51,32 | 51,03 | -12,06 | -11,77 |
| Guay, Martial | | 1 | 0,00 | 0,00 | 40,00 | 40,00 | -40,00 | -40,00 |
| Hamelin, Michael | | 108 | 28,70 | 28,70 | 55,46 | 53,57 | -26,76 | -24,86 |
| Hayes, Marnie | | 60 | 51,67 | 51,67 | 45,33 | 45,11 | 6,34 | 6,55 |
| Hebert, Stephanie | 5 | 42 | 61,90 | 56,76 | 44,76 | 41,58 | 17,15 | 15,18 |
| Hitchcock, Fred | | 54 | 64,81 | 64,81 | 53,05 | 51,86 | 11,77 | 12,95 |
| Hodgins, Barbara | | 32 | 28,13 | 28,13 | 48,20 | 46,76 | -20,07 | -18,63 |
| Homs, Elke | | 33 | 12,12 | 12,12 | 31,33 | 30,29 | -19,21 | -18,17 |
| Houde, Roger | | 90 | 6,67 | 6,67 | 32,98 | 32,88 | -26,31 | -26,21 |
| Hum, Oueenie | | 1 | 0,00 | 0,00 | 53,09 | 43,84 | -53,09 | -43,84 |
| Ireland, Judy | | 51 | 60,78 | 60,78 | 60,69 | 58,91 | 0,09 | 1,87 |
| Israel, Milton | | 98 | 64,29 | 64,29 | 54,61 | 54,20 | 9,67 | 10,08 |
| Jam, Jean-Guy | | 14 | 35,71 | 35,71 | 54,43 | 53,90 | -18,72 | -18,18 |
| Joakim, Clive | 29 | 128 | 55,47 | 42,42 | 62,32 | 55,45 | -6,85 | -13,02 |
| Jobin, Michel | | 47 | 14,89 | 14,89 | 44,59 | 43,97 | -29,70 | -29,08 |
| Kemsley, Thomas | | 14 | 28,57 | 28,57 | 51,61 | 50,80 | -23,04 | -22,23 |
| Kitchener, Susan | | 107 | 92,52 | 92,52 | 55,63 | 53,71 | 36,89 | 38,81 |
| Knevel, A. C. | | 138 | 29,71 | 29,71 | 29,60 | 28,64 | 0,11 | 1,07 |
| Lamont, Deborah | | 35 | 37,14 | 37,14 | 54,38 | 49,00 | -17,23 | -11,86 |
| Landry, Girard | | 113 | 43,36 | 43,36 | 32,47 | 32,41 | 10,89 | 10,96 |

| | | | | | | | | |
|----------------------|-----|-----|--------|--------|-------|-------|--------|--------|
| Lang, Lawrence | | 54 | 48,15 | 48,15 | 64,53 | 61,58 | -16,39 | -13,43 |
| Lapommeray, Jacques | | 133 | 75,19 | 75,19 | 53,53 | 52,56 | 21,66 | 22,63 |
| Lebel, Guy | | 119 | 67,23 | 67,23 | 49,33 | 48,69 | 17,89 | 18,54 |
| Leclercq, Dominique | | 80 | 91,25 | 91,25 | 53,05 | 51,75 | 38,20 | 39,50 |
| Leighton, Margaret | 1 | 51 | 49,02 | 48,00 | 57,60 | 53,75 | -8,58 | -5,75 |
| Levesque, Sylvie | | 85 | 20,00 | 20,00 | 36,25 | 36,07 | -16,25 | -16,07 |
| Lloyd, Christine | | 106 | 57,55 | 57,55 | 62,29 | 59,89 | -4,74 | -2,34 |
| Makonnen, Yilma | | 66 | 69,70 | 69,70 | 58,97 | 53,91 | 10,72 | 15,79 |
| Manios, George | | 98 | 62,24 | 62,24 | 56,66 | 56,28 | 5,59 | 5,96 |
| Mccool, Carolyn | | 19 | 57,89 | 57,89 | 53,57 | 52,44 | 4,33 | 5,46 |
| Mckenzie, Gordon | | 56 | 17,86 | 17,86 | 53,98 | 50,97 | -36,13 | -33,11 |
| Member, Dco | | 2 | 0,00 | 0,00 | 41,08 | 40,64 | -41,08 | -40,64 |
| Misir, Amarnath | | 45 | 71,11 | 71,11 | 57,65 | 55,12 | 13,46 | 15,99 |
| Montgomery, Joan | | 71 | 81,69 | 81,69 | 60,57 | 59,12 | 21,12 | 22,57 |
| Moore, Beverly | | 10 | 50,00 | 50,00 | 59,06 | 55,70 | -9,06 | -5,70 |
| Morrish, Deborah | | 37 | 62,16 | 62,16 | 64,04 | 63,60 | -1,88 | -1,44 |
| Mortazavi, Fahimeh | | 67 | 31,34 | 31,34 | 55,16 | 54,53 | -23,82 | -23,19 |
| Moss, Joel | | 108 | 82,41 | 82,41 | 51,15 | 49,86 | 31,25 | 32,55 |
| Mutch, Stuart | | 22 | 86,36 | 86,36 | 55,22 | 55,14 | 31,14 | 31,22 |
| Mutuma, Chimbo Poe | | 98 | 51,02 | 51,02 | 46,41 | 46,13 | 4,61 | 4,89 |
| Oddie, Lily | | 128 | 69,53 | 69,53 | 55,95 | 54,83 | 13,59 | 14,70 |
| Osmane, Farid | | 31 | 32,26 | 32,26 | 67,09 | 64,56 | -34,83 | -32,30 |
| Quirion, Richard | 10 | 16 | 81,25 | 50,00 | 70,98 | 51,62 | 10,27 | -1,62 |
| Owen, Robert | | 26 | 100,00 | 100,00 | 55,22 | 55,14 | 44,78 | 44,86 |
| Panagakos, Helene | | 56 | 57,14 | 57,14 | 33,26 | 33,18 | 23,88 | 23,96 |
| Pattee, Ross | | 82 | 52,44 | 52,44 | 54,79 | 54,01 | -2,35 | -1,57 |
| Pelletier, Jean-Paul | | 81 | 82,72 | 82,72 | 58,84 | 56,39 | 23,88 | 26,32 |
| Pergat, Ludmila | | 11 | 0,00 | 0,00 | 40,93 | 39,78 | -40,93 | -39,78 |
| Pinkney, Thomas | | 160 | 75,63 | 75,63 | 53,77 | 53,13 | 21,86 | 22,49 |
| Pirbay, Joulekhane | | 72 | 56,94 | 56,94 | 35,53 | 35,20 | 21,42 | 21,74 |
| Popatia, Berzoor | 6 | 13 | 84,62 | 71,43 | 78,39 | 67,81 | 6,23 | 3,61 |
| Prabhakara, Puttavee | | 120 | 50,00 | 50,00 | 55,13 | 54,61 | -5,13 | -4,61 |
| Prevost, Jean | | 101 | 20,79 | 20,79 | 41,37 | 40,92 | -20,58 | -20,13 |
| Processus, Accelere | 36 | 36 | 100,00 | N/A | 79,74 | N/A | 20,26 | N/A |
| Quirion, Richard | 120 | 145 | 91,03 | 48,00 | 72,51 | 56,73 | 18,53 | -8,73 |
| Railton, James | | 72 | 51,39 | 51,39 | 60,36 | 56,98 | -8,97 | -5,59 |
| Randhawa, Sajjad | | 46 | 2,17 | 2,17 | 60,06 | 57,09 | -57,89 | -54,92 |
| Randhawa, Sarwanjit | | 84 | 19,05 | 19,05 | 57,90 | 51,34 | -38,85 | -32,29 |
| Rangan, Veda | | 115 | 39,13 | 39,13 | 31,88 | 31,25 | 7,25 | 7,88 |
| Robic, Louise | | 88 | 37,50 | 37,50 | 46,35 | 45,66 | -8,85 | -8,16 |
| Robinson, Gerry | | 65 | 67,69 | 67,69 | 55,53 | 55,21 | 12,16 | 12,49 |
| Robitaille, Paule | | 118 | 27,12 | 27,12 | 42,47 | 42,03 | -15,35 | -14,91 |
| Ross, Hazelyn | | 8 | 12,50 | 12,50 | 60,55 | 60,25 | -48,05 | -47,75 |
| Ross, Michael | | 40 | 65,00 | 65,00 | 54,80 | 53,76 | 10,20 | 11,24 |
| Roy, Sylvie | | 1 | 0,00 | 0,00 | 31,22 | 31,16 | -31,22 | -31,16 |
| Ruggiero, Alfonso | | 70 | 62,86 | 62,86 | 53,72 | 53,16 | 9,14 | 9,70 |
| Sajtos, Joanne | 10 | 149 | 53,02 | 49,64 | 56,66 | 52,45 | -3,64 | -2,81 |
| Sandhu, Ken | 4 | 111 | 31,53 | 28,97 | 60,22 | 56,46 | -28,69 | -27,49 |
| Sandhu, Randy | 1 | 1 | 100,00 | N/A | 72,73 | N/A | 27,27 | N/A |
| Savage, Harvey | 12 | 162 | 66,05 | 63,33 | 64,86 | 60,72 | 1,19 | 2,62 |
| Shecter, Trudy | | 109 | 48,62 | 48,62 | 43,07 | 42,11 | 5,55 | 6,51 |

| | | | | | | | | |
|-----------------------------|------------|-------------|--------------|--------------|--------------|--------------|------------|------------|
| Short, William | | 88 | 71,59 | 71,59 | 59,87 | 59,26 | 11,73 | 12,33 |
| Siddique, K. | | 3 | 66,67 | 66,67 | 62,38 | 60,92 | 4,29 | 5,74 |
| Siddiqui, Yasmeen | | 19 | 68,42 | 68,42 | 57,06 | 56,12 | 11,37 | 12,30 |
| Silvestri, Anna-Mari | | 77 | 75,32 | 75,32 | 63,32 | 61,00 | 12,01 | 14,33 |
| Smith, Diane | | 43 | 37,21 | 37,21 | 59,38 | 56,14 | -22,18 | -18,93 |
| Smith-Gordon, Mauree | | 67 | 85,07 | 85,07 | 58,94 | 58,36 | 26,13 | 26,72 |
| Somers, Michael | | 77 | 53,25 | 53,25 | 56,71 | 56,35 | -3,46 | -3,10 |
| Special Ctry | | 2 | 0,00 | 0,00 | 35,94 | 35,94 | -35,94 | -35,94 |
| Stanwick, Nina | | 76 | 73,68 | 73,68 | 61,26 | 60,84 | 12,43 | 12,84 |
| Tabibzadeh, Nasrin | | 37 | 78,38 | 78,38 | 52,32 | 47,52 | 26,06 | 30,86 |
| Terrana, Anna | | 15 | 46,67 | 46,67 | 53,74 | 52,66 | -7,07 | -6,00 |
| Thomas, Stephanie | | 33 | 24,24 | 24,24 | 51,32 | 51,01 | -27,08 | -26,77 |
| Tinker, Diane | | 156 | 50,00 | 50,00 | 56,12 | 55,21 | -6,12 | -5,21 |
| Tshisungu, Jose | | 25 | 64,00 | 64,00 | 64,03 | 62,50 | -0,03 | 1,50 |
| Tshisungu, Jose W.T. | | 39 | 41,03 | 41,03 | 52,43 | 50,79 | -11,40 | -9,77 |
| Uppal, Atam | | 12 | 83,33 | 83,33 | 59,74 | 55,63 | 23,59 | 27,70 |
| Valeriano, Patrice | | 88 | 31,82 | 31,82 | 38,72 | 37,64 | -6,90 | -5,82 |
| Venne, Michel | | 38 | 78,95 | 78,95 | 66,98 | 64,28 | 11,97 | 14,67 |
| Venton, Anne | | 23 | 26,09 | 26,09 | 50,42 | 47,58 | -24,34 | -21,49 |
| Vienne, Michel | | 55 | 78,18 | 78,18 | 63,82 | 61,91 | 14,36 | 16,27 |
| Wang, George | | 60 | 55,00 | 55,00 | 59,07 | 58,35 | -4,07 | -3,35 |
| Weir, Margaret | | 128 | 16,41 | 16,41 | 30,35 | 29,21 | -13,94 | -12,80 |
| Wilson, Wilbert | | 72 | 16,67 | 16,67 | 52,24 | 51,72 | -35,58 | -35,06 |
| Wong, Bing | | 68 | 11,76 | 11,76 | 27,36 | 26,33 | -15,60 | -14,57 |
| Wright, Philomen | | 1 | 0,00 | 0,00 | 20,75 | 20,75 | -20,75 | -20,75 |
| Total at IRB in 2006 | 615 | 9984 | 54,08 | 51,06 | 54,08 | 51,06 | N/A | N/A |